

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

NEALLY CUNNINGHAM,

Plaintiff,

vs.

BUREAU OF PRISONS; DEBORAH
FORSYTH, Associate Warden;
B. EDMUNDS; and UNITED STATES
OF AMERICA,

Defendants.

CIVIL ACTION NO.: CV209-018

ORDER

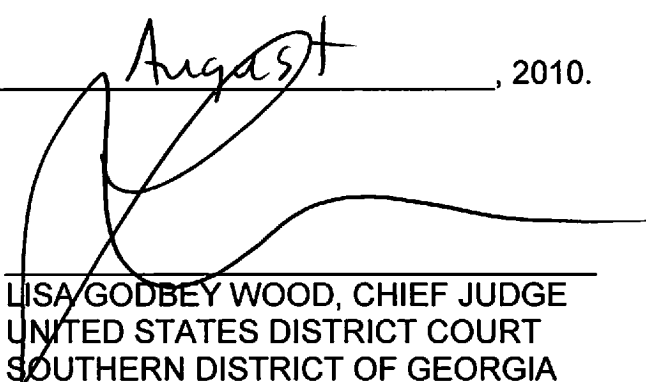
After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Plaintiff asserts that he misfiled his complaint under Bivens and that this court should allow his case to proceed under the Federal Tort Claims Act ("FTCA"), 28 U.S.C § 1346(b). Plaintiff's request that his claims should proceed under the Federal Tort Claims Act are moot, as Plaintiff has been granted leave to amend and reclassify his complaint. (Doc. No. 35).

Plaintiff reasserts in his Objections that he has exhausted his administrative remedies concerning his allegations against Defendants Edmunds, Forsyth, and the Bureau of Prisons. However, the record establishes that Plaintiff failed to exhaust his administrative remedies pertaining to his Bivens claims against these defendants. The

Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Plaintiff's Objections are **OVERRULED**. The Motion to Dismiss the Bivens claims filed by Defendants Edmunds, Forsyth, and the Bureau of Prisons is **GRANTED**.

Plaintiff's claims under the Federal Tort Claims Act against the United States remain pending.

SO ORDERED, this 18 day of August, 2010.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA